

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jan 06, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID BARNES NAY,

Defendant.

No. 4:18-CR-06044-EFS-4

ORDER GRANTING
DEFENDANT'S MOTION TO
RECONSIDER ORDER DENYING
PRE SENTENCE RELEASE AND
ORDER SETTING CONDITIONS
OF RELEASE

*****USMS Action Required*****

ECF No. 444

On January 6, 2021, the Court conducted a hearing on Defendant's Motion to Reopen Detention Hearing (ECF No. 444). With his consent, Defendant appeared by video from Yakima County Jail and was represented by Elijah Marchbanks and Mike Lynch. Assistant United States Attorney George Jacobs III represented the United States.

The Court has considered the Pretrial Service Reports, (ECF Nos. 145, 414, 483) and the briefing and arguments of counsel. As Defendant has already pleaded

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CONDITIONS OF RELEASE - 1

1 guilty, 18 U.S.C. § 3143(a) governs the Court's determination to release or detain
2 Defendant. Pursuant to 18 U.S.C. § 3143(a), the Court orders Defendant to be
3 released pending sentencing.

4 **IT IS ORDERED:**

5 1. Defendant's Motion to Reopen Detention Hearing (**ECF No. 444**) is
6 **GRANTED**. Defendant shall be released from custody on Monday, January 11,
7 2021, at 8:00 AM.

8 2. If a party desires this Court to reconsider conditions of release
9 because of material and newly discovered circumstances under 18 U.S.C. §
10 3142(f), that party shall file a motion with the Court, served upon the United States
11 Attorney, stating what circumstances are new, how they are established, and the
12 requested change in conditions of release.

13 3. If a party seeks review of this Order by another court pursuant to 18
14 U.S.C. § 3145(a), counsel shall adhere to the Detention Order Review Protocol
15 found in LCrR 46(k).

16 4. Defense Counsel is to verify that all firearms have been removed from
17 the proposed release address.

18 5. Defendant shall address all pending state court warrants.

19 6. Defendant shall abide by the following conditions at all times:
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STANDARD CONDITIONS OF RELEASE

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2 1. Defendant shall not commit any offense in violation of federal, state
3 or local law. Defendant shall advise the supervising Pretrial Services Officer and
4 defense counsel within one business day of any charge, arrest, or contact with law
5 enforcement. Defendant shall not work for the United States government or any
6 federal or state law enforcement agency, unless Defendant first notifies the
7 supervising Pretrial Services Officer in the captioned matter.

8 2. Defendant shall immediately advise the Court and the United States
9 Attorney in writing before any change in address.

10 3. Defendant shall appear at all proceedings and surrender as directed for
11 service of any sentence imposed.

12 4. Defendant shall sign and complete form A.O. 199C before being
13 released and shall reside at the address furnished.

14 5. Defendant shall not possess a firearm, destructive device or any
15 dangerous weapons.

16 6. Defendant shall report to the U.S. Probation/Pretrial Services office
17 before or immediately after release and shall report as often as they direct, at such
18 times and in such manner as they direct.

19 7. Defendant shall contact defense counsel at least once a week.
20

1 8. Defendant is further advised it is unlawful for any person who is
2 under indictment for a crime punishable by imprisonment for a term exceeding one
3 year, to receive, ship or transport in interstate or foreign commerce any firearm or
4 ammunition or receive any firearm or ammunition which has been shipped or
5 transported in interstate or foreign commerce.

6 9. Defendant shall refrain from use or unlawful possession of a narcotic
7 drug or other controlled substances defined in 21 U.S.C. § 802, unless prescribed
8 by a licensed medical practitioner in conformance with Federal law. Defendant
9 may not use or possess marijuana, regardless of whether Defendant has been
10 authorized medical marijuana under state law.

11 10. Defendant shall surrender any passport to Pretrial Services and shall
12 not apply for a new passport.

13 **SPECIAL CONDITIONS OF RELEASE**

14 1. Defendant shall remain in the Eastern District of Washington for court
15 proceedings unless given permission by the United States Probation/Pretrial
16 Services Office.

17 2. Defendant shall notify the United States Probation/Pretrial Services
18 Office within 24 hours of any change in address, telephone number, or
19 employment.

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CONDITIONS OF RELEASE - 4

1 3. All firearms must be removed from the home where the defendant
2 resides.

3 4. Defendant shall avoid all contact, direct or indirect, with any
4 codefendants or persons who Defendant would reasonably know are or may
5 become a victim or potential witness in the subject investigation or prosecution.

6 5. Defendant shall submit to a substance abuse evaluation and undergo
7 any recommended substance abuse treatment as directed by the United States
8 Probation/Pretrial Services Office. Prior to commencing any evaluation or
9 treatment program, Defendant shall provide waivers of confidentiality permitting
10 the United States Probation/Pretrial services office and the treatment provider to
11 exchange without qualification, in any form and at any time, any and all
12 information or records related to Defendant's conditions of release and
13 supervision, and evaluation, treatment, and performance in the program. It shall be
14 the responsibility of defense counsel to provide such waivers.

15 6. Defendant shall abstain totally from the use of alcohol.

16 7. Defendant shall submit to random urinalysis and breathalyzer testing
17 as directed by the United States Probation/Pretrial Services Office.

18 8. Defendant shall refrain from obstructing or attempting to obstruct or
19 tamper, in any fashion, with the efficiency and accuracy of any prohibited
20 substance testing which is required as a condition of release.

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1 9. Defendant shall submit to a mental health evaluation and undergo any
2 recommended treatment as directed by the United States Probation/Pretrial
3 Services Office. Prior to commencing any evaluation or treatment program,
4 Defendant shall provide waivers of confidentiality permitting the United States
5 Probation/Pretrial services office and the treatment provider to exchange without
6 qualification, in any form and at any time, any and all information or records
7 related to Defendant's conditions of release and supervision, and evaluation,
8 treatment, and performance in the program. It shall be the responsibility of defense
9 counsel to provide such waivers.

10 DATED January 6, 2021

11 s/Mary K. Dimke
12 MARY K. DIMKE
13 UNITED STATES MAGISTRATE JUDGE
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